his brother and family; below he sub-let to the second respondent company in which he stated he had an interest. He himself up to the date of appeal coming first before this Court had not dwelled in 19 Jalan Merbok. He states he has since lived there from April, 1948.

The Board declined the Appellant Company's application for re-occupation on the grounds that it would cause great hardship to the Respondents, presumably the 1st and 2nd Respondents, for the 3rd Respondent, the landlord, is not interested.

It seems to me that the Board were much influenced by fear of the hardship which would result to those then in occupation, namely the first Respondent's brother and family, and the 2nd Respondent Company. It felt that the justice of the claim by the Appellant Company should be subordinated to the hardship the first Respondent's relatives and the 2nd Respondent Company might suffer. The difficulty of alternative accommodation is well known, but did the Board proceed on the correct principles?

I think not. The preamble to the Ordinance reads :—

> An Ordinance to provide for the adjustment of Leases and Tenancies of premises, situate in urban areas, of the war absentees, and for the restoration of possession of such premises, disturbed during the period of enemy occupation.

And although the preamble cannot affect the plain meaning of the section of the order, it may be said to be the key to the understanding of it (*Maxwell*, 9th Edition Page 46).

In Roneo Ltd. v. Ng Yong Beng & others[1] Carey J., said :—

> I can say in general that it is right that the preamble to the Ordinance of which it forms part should be kept in view by the Board and unless a material injustice to the new tenant, which cannot be cured by the granting of compensation for ejectment and/or for improvements effected by the new tenant, is established, the Board should incline towards giving effect within the provisions of the Ordinance to the purpose of the Ordinance as expressed in the preamble.

It has been said that hard cases make bad law, and on page 214 of the 9th Edition by *Maxwell* on the Interpretation of Statutes it states :—

> Laws are made **ad ea quae frequentius accidunt**, and individual hardship not infrequently results from the enactments of general advantage. The argument of hardship has been said to be always a dangerous one to listen to. It is apt to introduce bad law and has occasionally led to erroneous interpretation of statutes. The Court ought not to be influenced or governed by any notions of hardship. It must look hardships in the face rather than break down the rules of law, and if, in all cases of ordinary occurrence, the law, in its natural construction, is not inconsistent, or unreasonable, or unjust, that construction is not to be departed from merely because it may operate with hardship or injustice in some particular case.

In my view the Appellant Company has a just claim to re-occupy. It was established in the premises for a measurable period prior to the Japanese invasion, and I can see no reason why the Ordinance should not be successfully invoked to restore such occupation, disturbed as it was through enemy action.

The compensation payable for ejectment and maintenance, I do not think I can fairly use the word "improvements", has been assessed by the Board at two hundred and thirty dollars and is clearly payable only to the 1st Respondent. The sum is accepted as equitable by the Appellant Company, and the current rent is also agreeable, but they seek immediate possession, at least, possession by the end of this month. I regard it more reasonable, in view of the known housing shortage, to grant a longer term.

I therefore reverse and set aside the decision of the Board and substitute the following order :—

The Appellant Company be put in possession of the premises, 19 Jalan Merbok, with effect from the 1st of July, 1949, as a monthly tenant at the rent of forty dollars per month. This order is subject to payment by the Appellant Company on or before the aforesaid date to the first Respondent of the sum of two hundred and thirty dollars.

After hearing argument I rule that each party bear its own costs.

Order of Board set aside — New Order substituted.

ONG KIM PIAW v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) April 11, 1949]

[Muar — Criminal Appeal No. 4 of 1949]

Evidence Ordinance Ss. 65, 74 and 168 — Charge of contravening conditions of permit by carrying an excessive number of passengers — Proof of terms of permit — Failure to produce original permit — Whether conviction can stand — Criminal Procedure Code S. 422.

In this case the appellant had been convicted for contravening the terms of a permit to operate a passenger carrying vehicle, by carrying more than the maximum number of passengers. The original permit was not produced at the trial.

Held, (1) that a certified copy of a permit under the Road Transport Proclamation is not admissible in evidence to prove the contents of the permit; (2) that excluding the improperly admitted certified copy of the permit, there was no evidence on which the Court could have convicted and therefore the appeal must be allowed.

Case referred to :—

(1) *R. v. Tay Choon Huat* Singapore Magistrate's Appeal No. 89 of 1947; Cited in Mallal's Criminal Procedure (3rd Ed.) p. 483.

CRIMINAL APPEAL.

W. H. Sault for the Appellant.

W. M. McCall for the Respondent.

Laville, J. : — There is no doubt, provided it was legally proved that the terms of the permit covering the vehicle J. 5752 limited the number of passengers to be carried therein to 29, that accused was rightly convicted of the offence charged.

The only question arising in this appeal therefore is whether the terms of the permit have been properly proved. It is a fundamental rule of criminal law that the *onus* of proving every ingredient that goes to make up the criminal offence is on the prosecution. In this case the owner of the vehicle J. 5752, who was permitted to operate it as a passenger carrying vehicle, was the Coastal Omnibus Coy., Ltd. It was the duty of the prosecution to produce the permit of that Company in order to prove its terms and so demonstrate to the Court that the condition relating to the number of passengers allowed to be carried had been infringed. This could have been done by subpoenaing a responsible officer of the Company to produce the permit at the trial.

This was not done. For reasons not explained to the Court by the prosecution, an alleged copy of the permit covering the vehicle certified as a true copy by the Commissioner of Road Transport, Federation of Malaya, was produced and put in by the officer conducting the prosecution as proof of the contents and conditions of the permit.

A permit is a document and the best proof of its contents is therefore the document itself. Sec. 64 of the Evidence Ordinance states that documents must be proved by primary evidence, i.e. the production of the document itself, except in certain cases set out in sec. 65. Of those exceptions none can be considered applicable in this case save the possibility that secondary evidence of the contents of the permit may be admissible under sec. 65 (e) or (f) of the Ordinance.

Sec. 65 (f) allows proof of a document by the production of a certified copy of it, if it is allowed by the Evidence Ordinance or any other Act. The Evidence Ordinance does not allow such proof of permits under the Road Transport Proclamation nor does any other act and therefore sec. 65 (f) does not apply.

Sec. 65 (e) allows secondary evidence by certified copy to be given of public documents. Such documents must fall within the definition of a public document set out in sec. 74, Evidence Ordinance. Sec. 74 defines public documents as: I. documents forming the acts or records of the acts (i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial and executive; II. public records of private documents.

Sec. 74, I. (i) and (ii) clearly do not apply to a permit under the Road Transport Proclamation. Sec. 74 I. (iii), though at first sight it seems to cover the nature of a permit it does not in actual fact do so. The record of a public act must be the original kept in the custody of the officer executing it. A copy certified by him is acceptable in evidence, but where the public act is the issue of a document, a copy of that document kept by the public officer for reference is not the original, and a certified copy of that document is therefore not admissible as secondary evidence of the original under this section.

I am of opinion, however, that such a document is admissible under sec. 74, II, of the Evidence Ordinance, but only in proof of the public record and not of the original document. The copy of the original document issued to the permit holder is a public record kept in the ordinary course of his public office by the Controller of Transport and as such a certified copy of it is admissible in evidence, but only in proof of the copy kept for reference and not as proof of the original permit which is a private document.

It will be seen therefore that a certified copy of a permit under the Road Transport Proclamation is not admissible in evidence to prove the contents of the permit, as it is actually a copy of a copy and is not authorised as evidence under the Evidence Ordinance.

The question whether in this case sec. 106, Evidence Ordinance, applies does not really arise. The charge is not one of using a vehicle without a permit but of using it under a permit, but failing to observe the conditions of the permit. It is not necessarily within the knowledge of a driver of a vehicle operating under a permit what the conditions attached to that permit are. He may be, as occurs in this case, the paid driver of the operator and there is no *onus* on him even to know that the vehicle has a permit; but there is an absolute liability on him not to use such a vehicle in any way inconsistent with the conditions on which the owner of the vehicle is permitted to operate it. If he fails to find out what those conditions are and unwittingly breaks them, he cannot be protected by a

plea of absence of *mens rea* or by proving that he did not know of them.

In this case the prosecution had the means of obtaining the original permit and producing it in Court, and they should have done so; they could not use the provision of sec. 65, Evidence Ordinance, governing secondary evidence, as they did not apply in this case. They have not therefore proved what the conditions attached to the permit covering J. 5752 are, and therefore there is no legal proof that the conditions were not observed by accused.

It may be argued that the improper admission of the certified copy of the permit is curable under the provisions of sec. 168, Evidence Ordinance, and sec. 422 of the Criminal Procedure Code, but on examination of the evidence it is clear that, if the evidence of the terms of the permit is excluded as being improperly admitted, the prosecution case must fail and the accused has nothing to answer. It cannot be said that, excluding the improperly admitted certified copy of the permit, there is sufficient other evidence adduced by the prosecution on which the Court could have convicted, since the *corpus delicti* was the number of passengers permitted and this could not be ascertained without the permit itself. The *ratio decidendi* in *R. v. Tay Choon Huat* (Singapore Magistrate's Appeal No. 89/47) cited in the commentary on sec. 448 of the Cr. Pro. Code of Singapore which is the same as sec. 422 of the Cr. Pro. Code of the Federation of Malaya, applies equally well to this case.

The appeal will be allowed and the conviction and sentence set aside and the fine, if paid, will be refunded.

Appeal Allowed.

ISMAIL BIN HAJI IBRAHIM v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., Pretheroe and Russell, JJ.) May 7, 1949]
[F.M. — Criminal Appeal No. 43 of 1949]

Emergency Regulations 1948 S. 4(1)(a) — Charge of carrying a firearm — Proof that firearm is serviceable — Discrepancy between statement of witness in police investigation and evidence given at trial — Failure to direct assessors on this discrepancy.

In this case the appellant had been convicted on a charge of carrying a firearm, to wit, a pistol, an offence contrary to Regulation 4(1)(a) of the Emergency Regulations, 1948. The evidence given at the trial was to the effect that appellant had visited a headman, took out a pistol and placed it on his lap. The headman described the pistol as made of steel and black in colour. His wife, who also gave evidence, said she saw a black pistol in the appellant's hand. Both the headman and his wife were kampong Malays and not acquainted with firearms. The pistol was not produced at the trial. A statement made by the wife of the headman during the police investigation was put in evidence at the trial. In it she is recorded as saying that the appellant pointed "a gun — probably a Sten gun" at her husband.

Held, (1) that the learned trial Judge should have directed the assessors to the fact that both the headman and his wife were kampong Malays not proved to be acquainted with firearms and warned them that they should bear this particular point in mind when considering their evidence regarding the firearm; (2) that the learned trial Judge had in this case failed to direct the assessors on the important inconsistency between the statement made by the wife of the headman in the police investigation and her evidence at the trial; (3) that it was impossible to say that if the assessors had been directed on this point, they would have come to the same conclusion and therefore the conviction must be quashed.

Case referred to :—

(1) *Chong Kim Seng v. Public Prosecutor* (1949) M.L.J. 109.

CRIMINAL APPEAL.

E. E. C. Thuraisingham for the Appellant.

M. Suffian for the Respondent.

The judgment of the Court of Appeal was delivered by :—

Willan, C. J. : — In this case the appellant was charged with carrying a firearm, to wit a pistol, an offence contrary to Regulation 4(1)(a) of the Emergency Regulations, 1948. He was convicted and sentenced to death.

On the 5th of August 1948, according to the prosecution, the appellant and another Malay went to the house of one Mohamed Taib at about 2 p.m. That house is in the village of Kampong Paya Luas, and Mohamed Taib, at that time, was the headman of the village. He and his wife lived in the house. The other Malay, who went to the house with the appellant, was not traced after this incident, and the appellant was unable to call him as a witness at the trial.

Mohamed Taib's evidence is that after entering the house the appellant took a pistol out of his right hand trouser pocket and placed it on his, the appellant's, lap. The appellant then warned Mohamed Taib not to pay any revenue to Government and threatened that if he, Mohamed Taib, went to the Land Office or to the police station the appellant would have him arrested. After this the appellant and the other Malay (untraced) went away. During the whole of the conversation the pistol remained on the lap of the appellant. When he went away he picked up the pistol from his lap and took it away with him. The pistol has not been seen since.

Mohamed Taib described this pistol as made of steel, black in colour. He said he did not know the